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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable James Donato, Judge

IN RE: CAPACITORS ANTITRUST)
LITIGATION.)
) NO. C 14-03264 JD
)
_____)

San Francisco, California
Tuesday, October 10, 2017

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

For Plaintiffs Direct Purchasers, Chip-Tech, Ltd., and
Dependable Component Supply Corporation:

JOSEPH SAVERI LAW FIRM
505 Montgomery Street - Suite 625
San Francisco, California 94111
BY: JOSEPH R. SAVERI, ATTORNEY AT LAW
JAMES G.B. DALLAL, ATTORNEY AT LAW
NICOMEDES SY HERRERA, ATTORNEY AT LAW
JOSHUA P. DAVIS, ATTORNEY AT LAW

For Plaintiffs Indirect Purchasers, Toy-Knowlogy, Inc., and CAE
Sound:

COTCHETT, PITRE & MCCARTHY LLP
San Francisco Airport Office Center
840 Malcolm Road
Burlingame, California 94010
BY: ADAM J. ZAPALA, ATTORNEY AT LAW

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

REPORTED BY: Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
Official Reporter

APPEARANCES: (CONTINUED)

For Plaintiff Flextronics International USA, Inc.:

WILLIAMS, MONTGOMERY & JOHN

Wills Tower

233 S. Wacker Drive - Suite 6100

Chicago, Illinois 60606

BY: CHARLES E. TOMPKINS, ATTORNEY AT LAW

For Plaintiff The AASI Beneficiaries Trust, by and through
Kenneth A. Welt, Liquidating Trustee:

BILZIN, SUMBERG, BAENA, PRICE

& AXELROD LLP

1450 Brickell Avenue - 23rd Floor

Miami, Florida 33131

BY: ROBERT W. TURKEN, ATTORNEY AT LAW

SCOTT N. WAGNER, ATTORNEY AT LAW

For Defendants Panasonic Corporation, et al., and Sanyo
Electric Group, Ltd., et al.:

WINSTON & STRAWN LLP

101 California Street

San Francisco, California 94111

BY: IAN L. PAPENDICK, ATTORNEY AT LAW

For Defendants Nichicon Corporation and Nichicon (America)
Corporation:

K&L GATES LLP

70 West Madison Street - Suite 3100

Chicago, Illinois 60602

BY: MICHAEL E. MARTINEZ, ATTORNEY AT LAW

For Defendant Matsuo Electric Company, Ltd.:

DENTONS US LLP

525 Market Street - 26th Floor

San Francisco, California 94105

BY: BONNIE LAU, ATTORNEY AT LAW

For Defendants Rohm Company, Ltd., and Rohm Semiconductor USA
LLC:

O'MELVENY & MYERS LLP

Two Embarcadero Center - 28th Floor

San Francisco, California 94111

BY: MEGAN HAVSTAD, ATTORNEY AT LAW

APPEARANCES: (CONTINUED)

For Defendant Hitachi Chemical Company, Ltd.:

WILSON, SONSINI, GOODRICH & ROSATI
1301 Avenue of the Americas - 40th Fl.
New York, New York 10019

BY: JEFFREY BANK, ATTORNEY AT LAW
CHUL PAK, ATTORNEY AT LAW

For Defendant HolyStone International:

JONES DAY
555 South Flower Street - 50th Floor
Los Angeles, California 90071

BY: ERIC P. ENSON, ATTORNEY AT LAW

For Defendants Okaya Electric America, Inc., and Okaya Electric Industries Company, Ltd.:

BAKER & MCKENZIE LLP
425 Fifth Avenue
New York, New York 10018

BY: DARRELL PRESCOTT, ATTORNEY AT LAW

For Defendants Soshin Electric Company, Ltd., and Soshin Electronics America, Inc.:

BAKER & HOSTETLER LLP
11601 Wilshire Boulevard - Suite 1400
Los Angeles, California 90025

BY: C. DENNIS LOOMIS, ATTORNEY AT LAW

For Defendant Shizuki Electric Co., Inc.:

DAVIS WRIGHT TREMAINE LLP
505 Montgomery Street - Suite 800
San Francisco, California 94111

BY: JOY G. KIM, ATTORNEY AT LAW

Tuesday - October 10, 2017

3:04 p.m.

P R O C E E D I N G S

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THE CLERK: Calling Civil 14-3264, In Re Capacitors
Antitrust Litigation.

Counsel?

MR. ZAPALA: Good afternoon, Your Honor. Adam Zapala
from Cotchett, Pitre & McCarthy for the indirect purchaser
plaintiffs.

MR. SAVERI: Good afternoon. Joseph Saveri on behalf
of the direct purchaser plaintiffs.

MR. TOMPKINS: And Charles Tompkins on behalf of
Flextronics.

MR. TURKEN: Robert Turken, Your Honor, for AASI
Liquidating Trust.

THE COURT: Oh, okay. Now, is that the one from
Florida?

MR. TURKEN: Yes.

THE COURT: All right. Okay.
Okay. Anybody else on the plaintiffs' side?

(No response.)

THE COURT: No? Yes?

MR. DAVIS: I may be speaking. Joshua Davis on behalf
of the Saveri law firm for direct purchaser plaintiffs.

THE COURT: What about the Arizona people? Are they

1 here?

2 **MR. TURKEN:** Yes, Your Honor. We are representing
3 them as well.

4 **THE COURT:** Oh, okay. All right.
5 All right. Defendants?

6 **MR. PAK:** Good afternoon, Your Honor. Chul Pak with
7 Wilson Sonsini for defendant Hitachi Chemical, and my colleague
8 Jeffrey Bank.

9 **MR. LOOMIS:** Good afternoon, Your Honor. C. Dennis
10 Loomis, Baker Hostetler, for Soshin Electronics.

11 **MR. ENSON:** Good afternoon, Your Honor. Eric Enson
12 with Jones Day on behalf of the HolyStone defendants and here
13 to speak on behalf of the defendants, to the extent I can, with
14 respect to the scheduling issues.

15 **THE COURT:** Oh, all right.
16 Okay. Let's do the preliminary approval request first.

17 **MR. ZAPALA:** Good afternoon, Your Honor. Adam Zapala
18 for the indirect purchasers.

19 **THE COURT:** Yes. All right. Looks good.

20 **MR. ZAPALA:** Thank you, Your Honor.

21 **THE COURT:** Is there anything I should know?

22 **MR. ZAPALA:** Nothing you should know other than, as we
23 said in our papers, we will be submitting to you a plan for
24 providing class notice.

25 We do expect additional settlements to be wrapped into

1 that round. We heard you on the last round. We'll make sure
2 that everything is in that notice, you know, the fees that we'd
3 be seeking on that round and all of that stuff, so that class
4 members have proper notice; but in terms of these two
5 settlements, that's all.

6 **THE COURT:** And attorneys' fees and everything else is
7 coming later; right?

8 **MR. ZAPALA:** Correct.

9 **THE COURT:** Okay. All right. Well, consider it
10 preliminarily approved.

11 **MR. ZAPALA:** Thank you, Your Honor.

12 **THE COURT:** When are you going to get the schedule to
13 me?

14 **MR. ZAPALA:** The schedule? The schedule for class
15 notice?

16 **THE COURT:** Yes.

17 **MR. ZAPALA:** We are in the process -- I don't want to
18 reveal too much, but we are -- as you know, you heard from one
19 of the counsel at the class certification hearing, we have
20 reached additional settlements with defendants. We're in the
21 process of getting those inked.

22 **THE COURT:** Are you going to wrap them all together,
23 is that --

24 **MR. ZAPALA:** Yeah. We'd like to wrap them all
25 together because it's more economic for the class. We don't

1 want to do multiple rounds of notice if we don't have to, so
2 we're going to try to get those deals finalized, present them
3 to you for preliminary approval at the same time we provide you
4 with our class notice motion, and do all of these settlements
5 as one.

6 **THE COURT:** Okay. All right.

7 Okay. So that's that.

8 **MR. ZAPALA:** One additional housekeeping item, if you
9 could indulge me -- I know one of the settling defendants is
10 here, Okaya -- to just ask that we could get the final approval
11 orders executed from the previous round of settlements, the
12 ones including Okaya.

13 **THE COURT:** Oh, yes. That should be fine. I just --
14 I think I may have mentioned last time, our business is
15 unusually brisk.

16 **MR. ZAPALA:** I understand.

17 **THE COURT:** So I will see if I can advance that. I
18 won't have them done probably this week, but I will do my best
19 to get them out early.

20 **MR. ZAPALA:** Thank you, Your Honor.

21 **THE COURT:** Okay. Now, let me ask you, now that we
22 have spent every year together since I have taken the bench,
23 what is happening on the plaintiffs' side with respect to
24 scheduling?

25 **MR. ZAPALA:** As you know, we submitted a joint

1 stipulation with the defendants. We do think --

2 **THE COURT:** The "we" part is in dispute.

3 **MR. ZAPALA:** Sorry?

4 **THE COURT:** The "we" part is in dispute.

5 **MR. ZAPALA:** I don't think the "we" part is in
6 dispute.

7 **THE COURT:** I thought the people -- who's going --
8 come on up.

9 **MR. ZAPALA:** Oh, the direct action plaintiffs?

10 **THE COURT:** That's what I'm talking about, yes, but
11 you're part of the schedule as well, so --

12 **MR. ZAPALA:** Correct.

13 **THE COURT:** -- what is happening?

14 **MR. ZAPALA:** As far as I know, the direct -- I'll just
15 call them the direct action plaintiffs -- have not filed any
16 indirect purchaser claims, so it's really not the indirect
17 purchasers issue. I'm bowing out, Your Honor.

18 **THE COURT:** All right.

19 **MR. ZAPALA:** And, you know, I think class counsel on
20 the direct side may have something to say about it and the
21 opt-outs, but we're not part of that.

22 **THE COURT:** Okay. All right. I feel like we had this
23 conversation about two years ago working together on the DPP
24 side --

25 **MR. SAVERI:** Your Honor --

1 **THE COURT:** -- and making sure everybody was included.
2 And Mr. -- and the Flextronics lawyer has sent me another
3 notice saying he wasn't invited to participate in something.

4 **MR. SAVERI:** And, indeed, Your Honor, the Flextronics
5 counsel have been since that time -- and they can speak for
6 themselves -- have been included in the scheduling, have
7 participated in discovery, and it's proceeded apace.

8 **THE COURT:** Well, what was it -- why don't you come on
9 up? What was it you didn't get notice of?

10 **MR. TOMPKINS:** Oh, Your Honor, it was the deposition.

11 **THE COURT:** Oh, yes. Okay.

12 **MR. TOMPKINS:** There are a lot of issues in the case.
13 We're not -- we just want to make sure we're included in the
14 request.

15 **THE COURT:** No, I understand that, but your letter
16 said that you weren't.

17 **MR. TOMPKINS:** To my knowledge we were not actually
18 consulted prior to the request being filed.

19 **THE COURT:** All right. Have you worked all that out
20 so that won't happen again?

21 **MR. TOMPKINS:** Well, who knows if it will happen
22 again; but, I mean, we're assuming it was an oversight, and
23 there are a lot of things going on in the case so we weren't
24 going to raise a specific --

25 **THE COURT:** All right. So you're not uniformly

1 unhappy?

2 **MR. TOMPKINS:** No, not uniformly.

3 **THE COURT:** All right. Okay.

4 Now, Florida is here to stay.

5 **MR. TURKEN:** Florida is here to stay.

6 **THE COURT:** All right. I don't really understand what
7 the Arizona plaintiffs are doing, but --

8 **MR. TURKEN:** The Arizona plaintiffs elected to opt out
9 and pursue their claims and try their cases in Arizona, and we
10 have consented to the defendants' 1407 motion to transfer their
11 cases to this court for pretrial purposes.

12 And, in fact, Your Honor, we are willing to agree to
13 proceed for Avnet and Benchmark as if the 1407 motion has
14 already been transferred.

15 The defendants have agreed to allow us to use the
16 discovery that they have produced in this case in connection
17 with the Arizona cases, which should dramatically avoid any
18 duplication, and we're working well with them in that respect.

19 So --

20 **THE COURT:** You are working well with them?

21 **MR. TURKEN:** Yes, Your Honor, we are.

22 **THE COURT:** Oh. I thought somebody sent me a letter
23 saying you were not being allowed access to the discovery.

24 **MR. TURKEN:** That is not, Your Honor, with respect to
25 the defendants.

1 **THE COURT:** That's what?

2 **MR. TURKEN:** That is not a problem we're having with
3 the defendants.

4 **THE COURT:** No, no. I'm talking about Mr. Saveri.
5 You're having a problem with Mr. Saveri.

6 **MR. TURKEN:** Your Honor, there appears to be a
7 disagreement as far as what Mr. Saveri believes our role in the
8 case should have been and should be; but, frankly,
9 Your Honor --

10 **THE COURT:** Let me just -- I'm sorry to interrupt. I
11 started a trial today and I've got a number of other things, so
12 I'm just a little slower than normal.

13 But so when you say you're having full access to
14 discovery, you mean from the defendants?

15 **MR. TURKEN:** We, Your Honor, have made arrangements
16 with the defendants to get the discovery -- to allow us to use
17 the discovery for Avnet and Benchmark.

18 **THE COURT:** Okay.

19 **MR. TURKEN:** We've also had extensive discussions with
20 Flextronics. Flextronics has been terrific. They've given
21 us -- we've made arrangements to obtain from them copies of all
22 the deposition transcripts. We've started actually reviewing
23 those. We've obtained most of the written discovery from
24 Flextronics. The holes that we had, Mr. Saveri has provided
25 us.

1 And, in fact, most importantly, Your Honor, we have worked
2 out an arrangement with Flextronics so that we will have access
3 to Flextronics' independent document database that they were
4 forced to establish.

5 Now, we're going to have to do additional translations and
6 they're going to be significant but we've already made
7 arrangements to start on that front. So we think that with
8 respect to the documents, with respect to the discovery that
9 has occurred to date, we're okay.

10 The problem that we're having is with depositions. What
11 we would like, Your Honor, is, first, to be given notice of the
12 depositions and to be given notice of the depositions
13 sufficiently in advance so that we can attend; second, to be
14 consulted with regard to scheduling of the depositions so that
15 it's not just laid out to us.

16 And what we'd also like, Your Honor, is -- we're on the
17 same side as the plaintiffs. We're all supposed to be
18 approaching this on the same end, and we would like to
19 meaningfully participate, to the extent we can, even if it
20 means just having a little bit of time reserved at the end of
21 the deposition so we can ask questions.

22 And what we'd like at a minimum is for the attorneys who
23 are going to be taking the lead at the depositions to provide
24 us with copies of the exhibits that they're intending to use,
25 the documents, so that we can prepare and we're not duplicating

1 effort.

2 This is what we did in LCD and this is what we did in CRT,
3 and it was the standard practice between opt-outs and the class
4 lawyers, and we would think that that would be something that
5 would work very well here as well.

6 **THE COURT:** Okay. What's the problem with that?

7 **MR. SAVERI:** So, Your Honor, a couple things. First
8 of all, we have provided to Mr. Turken copies of the discovery
9 that has been taken. We provided them -- we offered to give
10 them at our cost a copy of all the documents that were produced
11 by the defendants in the case. They turned us down on that.

12 **THE COURT:** Turned you down?

13 **MR. SAVERI:** They turned us down.

14 **THE COURT:** So what does that mean?

15 **MR. SAVERI:** So we -- in this case we've received from
16 the defendants about, I don't know, 7, now up to 8 terabytes
17 from the defendants directly. We've -- it's largely in
18 Japanese but not exclusively so. We've compiled it. We can
19 put it on media, and we offered to send it to Mr. Turken and
20 his counsel at our cost. We said, "Here, here are all the
21 documents that have been produced in the case." Mr. Turken
22 turned us down.

23 So what we are -- we've also offered since -- and we
24 agreed --

25 **THE COURT:** Let me just pause on that for a moment.

1 So is that right?

2 **MR. TURKEN:** No, Your Honor.

3 **THE COURT:** Well, what happened?

4 **MR. TURKEN:** Your Honor, we've been asking for access
5 to the document database for two years.

6 **MR. SAVERI:** Your Honor --

7 **THE COURT:** Two years?

8 **MR. TURKEN:** And what we've been willing to do is to
9 pay our fair share of the costs, and they said they were not
10 interested in working with us, and at this point that's fine.

11 What Mr. Saveri, I think, is referring to is that after
12 the hearing that occurred I believe it was on September 21st,
13 he reached out to us and said, "You can have copies of the
14 documents themselves."

15 And, frankly, Your Honor, dealing with that -- and that
16 was after we, again, had asked him for a proposal to allow us
17 access to his document database.

18 And, frankly, the arrangement we have with Flextronics
19 where we're going to at least have access to their document
20 database, we'll have to do the translations, but it will save
21 hundreds of thousands of dollars to reestablish the same
22 documents in the same database, and that's really all we're
23 looking to do.

24 **MR. SAVERI:** So, Your Honor, again, I'll say it again,
25 we -- all the documents that were produced to us by the

1 defendants we're agreeing to provide to them at our cost. I've
2 said it three times.

3 **THE COURT:** Full, complete production set?

4 **MR. SAVERI:** Yeah, the way we got it and compiled it,
5 and I've said it --

6 **THE COURT:** How about translations and things like
7 that?

8 **MR. SAVERI:** So the translations, there are a couple
9 things. They've already received the translated deposition
10 exhibits because they were marked at the depositions, so they
11 have those already because they have the depositions.

12 **THE COURT:** For every deposition?

13 **MR. SAVERI:** Every deposition. So that, in large
14 measure, is the core of the case.

15 We are also -- as we go and preparing for depositions, we
16 do translate documents in order to get them ready. That's our
17 work product; and what we will say again is we're willing to
18 make those available, but we should talk about an economic --
19 you know, what it -- about our costs and what we've invested in
20 that because that's -- that's a lot of work product,
21 Your Honor. That's the attorney time. That's all the review
22 that we've been doing.

23 And we're willing to talk about how to do that. I've
24 said --

25 **THE COURT:** I thought we -- I thought you worked that

1 out with Flextronics a couple years ago.

2 **MR. SAVERI:** Well, we thought that we had made
3 arrangements. We have worked it out with Flextronics because
4 they have a copy of our database. Now, Flextronics has been in
5 this case for a while and they've undertaken on their own,
6 because they've got their own case and they're prepared to
7 prosecute their own case, they've translated the documents
8 themselves. And as we prepare for the depositions, Flextronics
9 has -- to some extent the documents have been translated
10 because they've been marked as exhibits, but Flextronics comes
11 to the depositions with their own translations.

12 So that's been going on for sometime. We haven't had an
13 issue with that.

14 **THE COURT:** Let me just make sure I understand.

15 So, Mr. Tompkins, why don't you come up.

16 When the direct purchaser plaintiffs get a document in
17 Japanese, you're both doing independent Japanese translations?

18 **MR. SAVERI:** Not in all cases. In some cases because
19 we're preparing the case separately, we have translated the
20 same document. And part of the case has to do with Flextronics
21 that we have no interest in.

22 **THE COURT:** No, no, I understand. But there might be
23 a paragraph that Flextronics does on its own, but why the whole
24 document?

25 **MR. TOMPKINS:** We've essentially used -- we've

1 essentially had separate translation documents.

2 **THE COURT:** Really? That's not efficient.

3 **MR. TOMPKINS:** It was not necessarily our choice to do
4 it that way, but it became the way to get it done.

5 **THE COURT:** Why are you all doing it that way? Why
6 aren't you all sharing a uniform -- my concerns are anything
7 from duplicative, maybe triplicate costs; and that raises
8 issues of should we get to fee shifting that's involuntary at
9 some point in this case, I'm going to have a hard time
10 justifying that.

11 And, secondly, translations, I don't want marginal
12 differences creating problems. So, you know, Japanese to
13 English is not the easiest of translations.

14 **MR. TOMPKINS:** Your Honor, I do think when documents
15 are marked as exhibits, we've agreed on a single translation.

16 **THE COURT:** You have?

17 **MR. SAVERI:** And that's absolutely the case.

18 **THE COURT:** You're not examining the same witness with
19 two different translations?

20 **MR. SAVERI:** Absolutely not.

21 **MR. TOMPKINS:** I don't think that's happened.

22 **MR. SAVERI:** Sometimes Flextronics is the first party
23 to take the deposition and it's marked, and we rely on that;
24 and then I think, which is more often the case, the directs and
25 the indirects, who have been working together, will mark the

1 exhibits.

2 **THE COURT:** That can be chaotic if three people are
3 examining the witness with three different translations.

4 **MR. SAVERI:** And I can't recall a situation -- and
5 Mr. Tompkins can correct me if we've had many of these
6 situations, or Mr. Zapala -- where we -- I don't believe there
7 are really any situations where we've used the same document.

8 **MR. ZAPALA:** No. That hasn't -- that, to my
9 knowledge, has not happened.

10 **THE COURT:** Different translations, okay.

11 **MR. TURKEN:** But, Your Honor, that's -- you're
12 focusing in on one of the problems.

13 So let's assume, for example, a deposition is scheduled
14 and direct action plaintiffs are taking the lead in that
15 deposition and we're also preparing to take the deposition. So
16 we're going to put forth the effort to review the documents,
17 translate the documents for the deposition, and they're doing
18 the same thing.

19 And all we are asking for is that the attorney that's
20 taking the lead at the deposition give us a set of the
21 documents that they're going to use at the deposition
22 sufficiently in advance so we don't have to duplicate efforts.
23 It makes no sense.

24 **THE COURT:** Including a translation?

25 **MR. TURKEN:** Yes, including the translation so, again,

1 we don't have to do the same thing. We're going to see the
2 documents when they use them at the deposition, so it's really
3 just giving it to us a few days earlier.

4 And we're supposed to be on the same side in the sense of
5 we're all representing plaintiffs' interests. We don't
6 understand why that should be controversial. It's not as if we
7 are taking advantage of their work product.

8 We'll do it ourselves. We have no problem doing that, but
9 the difference is going to be with regard to scheduling. The
10 more that we have to duplicate, obviously the longer it's going
11 to take us.

12 We went over the schedule that they attached to the
13 stipulation, Your Honor. We don't believe that that
14 schedule --

15 **THE COURT:** Before we get to that --

16 **MR. TURKEN:** I'm sorry.

17 **THE COURT:** -- let's just work out how we're going to
18 handle this. What do you want to do?

19 **MR. TOMPKINS:** We don't have any objection to giving
20 translations to them in advance that we use in the depositions.

21 **THE COURT:** I think he wants all the exhibits, all the
22 proposed exam exhibits.

23 **MR. TOMPKINS:** Flextronics doesn't -- when I say "we,"
24 I mean Flextronics.

25 **THE COURT:** The proposition is before you-all walk

1 into a deposition -- "you" being the direct purchaser
2 plaintiffs -- you will all have communicated in advance about
3 "These are the likely exam topics I'm going to cover, and here
4 are the documents I'm going to use"; right?

5 Yes?

6 **MR. SAVERI:** So two things, Your Honor. First of all,
7 in the LCD case where we were the -- where I was one of the
8 lead counsel for the direct purchaser class, we did it
9 informally. It worked fine. We didn't get any demands for
10 outlines or exhibits before. It worked informally and fine.
11 This controversy is unusual in my experience.

12 Second, right now --

13 **THE COURT:** Yeah, but these are opt-outs.

14 **MR. SAVERI:** But we had opt-outs. We had Dell. We
15 had others. We never had this problem. Dell did their own
16 work. We coordinated and exchanged deposition exhibits before
17 the deposition.

18 One of the practical problems we have right now is the --
19 we have a schedule where we're -- we've got depositions one day
20 after another. Some days we're double or triple tracking. I
21 want to make sure -- we're fine with coordinating, but I don't
22 want to build in a lot of process that's going to prevent us
23 from preparing for the depositions getting it done when we've
24 got so much going on.

25 **THE COURT:** Look -- and I appreciate that -- on the

1 other hand, I don't want a situation where -- is it AASI?

2 **MR. TURKEN:** AASI.

3 **THE COURT:** -- who's here to stay through verdict and
4 appeal, if it gets to that point, prepping a deposition as if
5 it were the sole examining party while you're doing exactly the
6 same thing. It just doesn't make any sense.

7 **MR. SAVERI:** And, Your Honor, I'm fine with -- if --
8 to say before the deposition --

9 **THE COURT:** Flextronics, I mean, both of them are in
10 the same situation.

11 **MR. SAVERI:** And part of this is Mr. Zapala too
12 because we've taken -- we have all --

13 **THE COURT:** He doesn't want to be involved.

14 **MR. SAVERI:** Well, but it's not --

15 **THE COURT:** He's standing away from your side of the
16 podium.

17 **MR. SAVERI:** Yeah, and I appreciate that, and my arms
18 are kind of long and I'm roping him in.

19 But part -- just so you understand, Your Honor, what
20 happens is that, as these depositions have been going forward,
21 we kind of alternate or allocate the lead of who's going first.
22 The indirects go first sometimes, the directs go first
23 sometimes, and we've done a very good job coordinating with
24 them and exchanging these exhibits and doing exactly what we're
25 talking about here.

1 So if we're going to be talking about exchanging exhibits
2 before depositions, it's not only going -- it's going to
3 include a responsibility that Mr. Zapala is going to have to
4 bear, and so I just want to be clear about that.

5 We're fine with 24 hours in advance of the deposition
6 giving them a copy of what we plan to use. We don't have any
7 problem with that, and I'll say it again. We're welcome to do
8 that.

9 **THE COURT:** How are you dividing your time up at the
10 depos?

11 **MR. SAVERI:** Well, the way it's gone so far is that
12 essentially we -- I don't even know exactly how much time
13 you're allocated, but we have not had a problem in one
14 deposition, as far as I know, about allocating time.

15 **THE COURT:** Is that right?

16 **MR. TOMPKINS:** We've informally agreed to allocate.
17 Flextronics' deposition time varies significantly by defendant
18 depending on who we did business with and things like that. So
19 so far we have not had -- we came before Your Honor in the
20 context of 30(b)(6) depositions and asked for more time for
21 certain specific defendants, and we've informally taken longer
22 than seven-hour depositions of certain defendants by agreement
23 of the parties.

24 **THE COURT:** That's fine. If you're all in agreement
25 with that, I don't care.

1 **MR. SAVERI:** And so we've been -- I mean, again --

2 **MR. ZAPALA:** To date it's worked out very well,

3 Your Honor.

4 **MR. TURKEN:** Your Honor, we don't expect that that's
5 going to be a problem because we're not looking to replicate
6 what they're doing. So if we're going to ask additional
7 questions, we're happy to wait till the end and we're happy to
8 limit it. Just as long as a little bit of time is reserved for
9 us, that's all we're asking.

10 **MR. SAVERI:** And that's fine. We feel like we want to
11 have the opportunity to conduct the examination and do the work
12 we need to do as long as that's happening at the end.
13 Candidly, I think the defendants have been pretty good about
14 time limits and not imposing it -- you know, bringing the
15 curtain down at the expiration of the time, so I think that's
16 going to be worked out.

17 I want to comment first also on the deposition scheduling.

18 **THE COURT:** Well, let's just work this out.

19 **MR. SAVERI:** Yeah.

20 **THE COURT:** So I have to be honest with you, I'm
21 having trouble understanding exactly what the issue is. I
22 mean, I got a letter -- I think from you, Mr. Turken -- saying
23 you've been excluded from any meaningful participation in
24 discovery, and class counsel is refusing this and that; and now
25 I'm hearing today that maybe it's not quite as dire as the

1 letter seemed to suggest, but I'm still not understanding what
2 the problem is.

3 **MR. TURKEN:** Well, Your Honor, actually --

4 **THE COURT:** What do you want me to do? If you were
5 the judge, what would you do today?

6 **MR. TURKEN:** Okay. All we are asking with respect to
7 depositions is three things.

8 **THE COURT:** Yes.

9 **MR. TURKEN:** One, to be given sufficient notice of the
10 deposition. A couple weeks ago we received notice on a Sunday
11 for a series of depositions Monday and Tuesday in three
12 different cities. That was different.

13 **THE COURT:** All right. Let's pause on that.

14 What is the arrangement with Flextronics for notice?

15 **MR. TOMPKINS:** It's been informal and there's been a
16 few glitches, but generally we've been able to schedule in
17 accordance with the schedules of everyone.

18 **MR. SAVERI:** And, Your Honor --

19 **THE COURT:** I had the impression that maybe the three
20 of you -- or the four of you I should say -- were sitting down
21 on a weekly basis saying, "Here's the plan." You're not doing
22 that?

23 **MR. TOMPKINS:** That's probably a misimpression,
24 Your Honor, but there has been --

25 **THE COURT:** Would you like to do that?

1 **MR. TOMPKINS:** We're certainly open to that,
2 Your Honor. We don't object to any of the relief that the
3 other opt-outs are requesting.

4 **MR. SAVERI:** And, Your Honor, with respect to the
5 scheduling, we have had a lot of depositions that we're trying
6 to get done in a relatively short period of time. We have a
7 lot of coordination to do.

8 I think it is generally the case -- it's the rule but
9 there are exceptions because there's so many moving parts --
10 that we have included -- we -- I mean, Mr. Zapala's office and
11 mine have spent a lot of time trying to schedule depositions
12 all over the planet.

13 We've included Mr. Tompkins in that process generally.
14 From time to time to be fair we've just -- we've missed
15 communication. But, candidly, there's a lot going on.

16 We're happy -- and since the new lawyers have come, we
17 provided deposition notices. A lot of these were scheduled a
18 long time in advance. I believe they have every deposition --
19 a copy of -- we've informed them of every deposition that is
20 currently scheduled or in negotiation.

21 So I think we're doing what we need to do to coordinate
22 it. I'm happy if we need to have a more regular dialogue.

23 **THE COURT:** Can't you just share like a planning
24 plaintiffs' side calendar or something that plans a month in
25 advance?

1 **MR. SAVERI:** We do that, and I think Mr. Tompkins can
2 speak to it. I think we do it. It's not a -- it's not a
3 regular -- it's not formal. It's informal and that works
4 because there's so many moving parts, but I think that's
5 actually what has happened.

6 **MR. TOMPKINS:** Your Honor, generally speaking, we have
7 been able to schedule depositions consistent with all of our
8 schedules.

9 **THE COURT:** Mr. Turken, you just arrived. Maybe
10 there's just a getting-to-know-you glitch and now we're past
11 it.

12 **MR. TURKEN:** Right. And we understand that there are
13 scheduling issues. We are willing to work with them. We
14 understand that we're not going to be able to -- and it's not
15 our intention to disrupt anything, but just to be able to
16 include us a little bit in the scheduling process. That's all
17 we're asking.

18 **THE COURT:** All right. Consider it done.

19 **MR. ZAPALA:** Your Honor, I can assure you we will
20 not -- I think it is an issue --

21 **THE COURT:** Include them in the scheduling process.

22 **MR. ZAPALA:** Yeah. That's not going to be a problem.
23 Yes.

24 **THE COURT:** And more than, you know, Sunday notice for
25 Monday depositions.

1 **MR. TURKEN:** And the other issue I think Mr. Saveri
2 has resolved, and that is the issue of give us the exhibits or
3 the anticipated exhibits 24 hours in advance. That's fine.

4 **MR. SAVERI:** Okay.

5 **THE COURT:** Done?

6 **MR. SAVERI:** Yeah. I made the offer. I stand by what
7 I said a few minutes ago.

8 **THE COURT:** Okay. Does that resolve everything?

9 **MR. TURKEN:** That resolves it.

10 **THE COURT:** Okay. All right.
11 Anything else I can help you with?

12 **MR. SAVERI:** Well, Your Honor, I have -- we have --

13 **THE COURT:** Oh, I'm sorry. Let me just jump in.
14 There's something about Mr. Okubo's deposition.

15 **MR. SAVERI:** So Mr. Okubo --

16 **THE COURT:** Is his lawyer here?

17 **MR. SAVERI:** I don't know.

18 **MS. LAU:** Good afternoon, Your Honor. Bonnie Lau on
19 behalf of defendant Matsuo Electric Company.

20 Okubo is our employee but obviously represented by
21 individual counsel, who's not present today.

22 **THE COURT:** Oh. All right. Well -- so what's the
23 issue? You're concerned that it be technically a second
24 deposition you want approval for?

25 **MR. SAVERI:** Your Honor, originally Mr. Okubo took the

1 Fifth. He's incarcerated at Lompoc now. We want to take his
2 deposition on the merits and we want to take it while he's in
3 the United States, and so we've followed the procedure which we
4 need to follow in order to schedule the deposition with the
5 Bureau of Prisons at Lompoc. And that's the nature of the --
6 that's what the request is.

7 **THE COURT:** You advised everybody the deposition is
8 going forward; right?

9 **MR. SAVERI:** Yes, but we need your order in order to
10 present it to the prison.

11 **THE COURT:** All right. We'll see if -- who's
12 Mr. Okubo's lawyer?

13 **MS. LAU:** Mr. Okubo's lawyer is Ariel Neuman. He is
14 aware of the issue. I also am aware that the Department of
15 Justice may be interested in taking a position on this, so I
16 don't --

17 **THE COURT:** Wait for a response to the letter and if
18 nobody opposes it, that's fine.

19 **MR. SAVERI:** And that's fine. We served notice with
20 everybody to make sure everybody will get an opportunity.

21 **THE COURT:** Anything else?

22 **MR. SAVERI:** We have the schedule --

23 **MR. ZAPALA:** Yes, Your Honor.

24 **MR. SAVERI:** -- and also, Your Honor, I wanted to
25 advise Your Honor that the direct purchaser plaintiffs have

1 reached additional settlements with Soshin and Hitachi.

2 **THE COURT:** Okay.

3 **MR. SAVERI:** So I wanted to advise you of that fact.

4 **THE COURT:** All right. So those will be coming, the
5 preliminary approval papers?

6 **MR. SAVERI:** We are documenting the scheduling. I
7 don't want to get over my skis and promise something I can't
8 deliver, but as soon as we do it, we'd like to come in on some
9 version of shortened time to get the preliminary of which we're
10 done.

11 **THE COURT:** Yeah, okay.

12 Yes?

13 **MR. TURKEN:** Your Honor, with regard to the schedule,
14 the current schedule as proposed in the stipulation is really
15 not feasible for AASI or Benchmark. We believe we're going to
16 need an additional four months past the March 9th date set
17 forth in the stipulation for discovery to conclude it.

18 It's going to be a lot of work because we have a lot of
19 catch-up to do, plus there are going to be a lot of depositions
20 that we're taking that are not being taken in the class cases
21 because of settlements. And so we think that we're going to
22 need that additional four months.

23 Now, we have no interest in disrupting or interfering with
24 the class schedule, but Your Honor has observed before that
25 you're not really interested in multiple schedules. So our

1 concern is --

2 **THE COURT:** It's not a matter of not being interested.
3 It's just a horribly poor idea for going forward. I mean, it
4 just invites a tremendous misallocation of money, time, and
5 judicial resources.

6 **MR. TURKEN:** And, Your Honor --

7 **THE COURT:** I'm just not going to do that. It's not a
8 matter of liking or disliking it; it's just bad
9 decision-making.

10 **MR. TURKEN:** And that is why, Your Honor, we're trying
11 to include Avnet and Benchmark as if they're already before the
12 court on the 1407 motion; but having five months to conclude
13 discovery -- to complete discovery when we're just starting the
14 process is just not feasible for us.

15 **MR. SAVERI:** Your Honor, I don't -- our view is
16 because his clients are direct purchasers, their allegations
17 are within the four corners of our complaint. We see -- we
18 have an interest in keeping the schedule advanced in an
19 efficient way and we're not duplicating anything. So our
20 strong preference is to have a single schedule where we're
21 conducting all the discovery we need to do.

22 Candidly, we think these cases because they're so close
23 would be subject to a consolidation motion under Rule 42(a),
24 and we intend to proceed on that basis.

25 I think if they have individual discovery, that's

1 something -- discovery from the defendants, probably something
2 we don't have an interest in, they should go ahead and pursue
3 it. We don't have any objection to that.

4 **MR. TURKEN:** The difficulty, Your Honor, is, again,
5 just as an example, the number of parties that the plaintiffs,
6 class plaintiffs, have settled with -- I think right now
7 there's six different defendants -- very little discovery has
8 been taken from them; and there are, as counsel has just said,
9 numerous depositions being scheduled now just to fit within the
10 current requested additional schedule.

11 So we're going to have to do that, we're going to have to
12 catch up, and then we're going to have to take the additional
13 discovery.

14 I think asking for the additional four months in our
15 circumstances is not unreasonable, and it's going to be
16 virtually impossible, particularly because we are going to have
17 to do additional translations as well, to be able to complete
18 it in the current schedule.

19 **MR. SAVERI:** Your Honor, Mr. Turken is incorrect to
20 the extent he's suggesting that we do not -- that additional
21 discovery has to be pursued with respect to the settling
22 defendants.

23 With respect to a number of them that we've settled with,
24 we've already completed the discovery. With respect to some of
25 the ones we settled with early, there will be depositions from

1 them.

2 So we don't -- we think there should be one schedule, and
3 if it has to be delayed somewhat so that we can proceed apace,
4 that's okay with me, Your Honor; but I don't -- I think part of
5 what we're trying to do is advance this case on a single
6 schedule officially. And, frankly, my opinion is proceeding on
7 two schedules would be inconsistent with that.

8 **MR. TOMPKINS:** Your Honor, Flextronics is not going to
9 participate in a consolidation motion. Just that's not our
10 view. I just want to make sure the pronouns were clear.

11 **THE COURT:** No, I understand.

12 **MR. TOMPKINS:** In terms of the schedule, we're
13 comfortable with extending the current schedule out to
14 accommodate the new litigants --

15 **THE COURT:** Okay.

16 **MR. TOMPKINS:** -- as appropriate.

17 **THE COURT:** Yes?

18 **MR. ENSON:** Your Honor, may I be heard on this?

19 **THE COURT:** Yes.

20 **MR. ENSON:** Your Honor, the defendants' view is that
21 there should be one schedule. That is what we attempted to do
22 with this proposed and stipulated schedule that we submitted to
23 you last week, I believe it was. We do not think there's a
24 need for eight more months of discovery. That is just far too
25 long.

1 **THE COURT:** It sounds exhausting.

2 **MR. ENSON:** I'm sorry?

3 **THE COURT:** It sounds exhausting.

4 **MR. ENSON:** It sounds incredibly exhausting,
5 Your Honor. It's just far too long. There's plenty of time
6 for the additional opt-out plaintiffs to catch up.

7 There's been -- the number of depositions --

8 **THE COURT:** Just tell me what that means. Why is
9 there plenty of time for the new opt-outs to catch up?

10 **MR. ENSON:** Many depositions have already been taken.
11 Much discovery has already been done. The document
12 productions, the written discovery, and a fair amount of the
13 depositions are complete. There's not that much more to do.

14 **THE COURT:** But nobody asked about Mr. -- is it
15 Mr. Turken?

16 **MR. TURKEN:** Turken.

17 **THE COURT:** -- Mr. Turken's client. I mean, nobody
18 ever said anything about Mr. Turken's client at any of these
19 depos.

20 **MR. ENSON:** That's true, Your Honor, but they are a
21 direct purchaser and much of what was done been by the direct
22 purchaser plaintiffs in these depositions covered their claims.

23 **THE COURT:** Mr. Saveri could globally settle
24 everything tomorrow and Mr. Turken has a case to go forward on.
25 What's he going to talk about if not a single witness has ever

1 mentioned his company?

2 **MR. ENSON:** He can propound discovery within the
3 allotted time. He can take discovery within the allotted time.
4 There's plenty of time for that, Your Honor.

5 **MR. TURKEN:** Your Honor, at the last hearing you
6 observed that the time just to catch up on the documents and to
7 redo the translations, it could take six months in and of
8 itself. I think our asking for an extra four months to bring
9 the total to nine months under the circumstances is not
10 unreasonable just to take the time to review the depositions
11 that have already been taken, to review the written discovery,
12 to review the 7 terabytes of documents that may apply to
13 clients that we want -- to defendants we want to focus on.

14 I understand the position of the defendants, I understand
15 the position of the plaintiffs, which is why we said earlier we
16 don't want to disrupt anything.

17 So we're willing to play either way. We're either willing
18 to, if the Court is of the mind, to delay the discovery just
19 for our group of plaintiffs; or if the Court wants --

20 **THE COURT:** No, no. I'm not of that mind. Let me
21 just ask you this: What are you planning to do with experts?

22 **MR. TURKEN:** Your Honor, we have our own experts, and
23 we haven't even had a chance to give them the data yet. We're
24 in that process as well.

25 **THE COURT:** You have your own experts?

1 **MR. TURKEN:** Yes, Your Honor. That was -- that's
2 been -- and we are -- have had extensive discussions with them
3 also; but, again, we're just compiling the data for them.

4 **MR. ENSON:** Your Honor --

5 **MR. SAVERI:** Let me short-circuit one thing about the
6 data so we're not here in a month having this. We have all the
7 transactional data for all of the purchasers -- billed to, sold
8 to for all the direct purchasers, including his clients. If he
9 wants that --

10 **THE COURT:** His clients are on the --

11 **MR. SAVERI:** And they're in the database. When we got
12 the data, it included his clients, it included Flextronics. If
13 he wants that data, he should talk -- he should make that
14 request to me.

15 **MR. ENSON:** Your Honor, if I might. I understand the
16 points that Mr. Turken is making, I understand the points and
17 your concerns, but this is, in some sense, a problem of their
18 own making. These cases have been pending for I think a year,
19 maybe even longer, and at a number of the status conferences
20 Your Honor asked "What's going on with the other opt-outs?"
21 And everyone looked around not knowing.

22 They've been sitting in the states where they filed not
23 active in this litigation at all, and now this is the first
24 time, you know, a month before discovery is set to close, that
25 they're coming and asking for additional eight months of

1 discovery. It's unfair to the defendants, Your Honor. It's
2 also unfair to subject us to additional depositions that would
3 not otherwise be taken or duplicative depositions.

4 **MR. TURKEN:** Your Honor, we have no problem avoiding
5 duplicative depositions. Your Honor, over a year ago we asked
6 to have our cases transferred to this court for pretrial
7 purposes under 1407. Everybody objected.

8 After the JPML panel denied our motion, the JPML panel
9 suggested informal cooperation on discovery. We sent letters
10 saying, "Okay. The JPML has suggested informal cooperation.
11 Let's cooperate." Everybody rejected us again.

12 **MR. ENSON:** That's not correct, Your Honor. The
13 defendants agreed that they could get access to the documents
14 from Mr. Saveri provided that they signed the protective
15 orders. That was a year ago, Your Honor.

16 **MR. TURKEN:** We did.

17 **MR. ENSON:** And you didn't get the documents. That's
18 not the defendants' fault.

19 **THE COURT:** All right. I can't do this today.

20 Do you-all want to come back next week? How about next
21 Thursday, a week from Thursday?

22 How does a week from Thursday look? Am I here? Oh, I
23 won't be here.

24 **THE CLERK:** No.

25 **THE COURT:** Yes. I won't be here Wednesday, Thursday,

1 Friday. Trial will be through Wednesday.

2 And then what's the following Thursday look like, Lisa?

3 **THE CLERK:** Actually, Capacitors case is on calendar.

4 **THE COURT:** What's happening on the 25th?

5 **THE CLERK:** The 26th.

6 **THE COURT:** The 26th.

7 **THE CLERK:** Motion to dismiss.

8 **MR. ZAPALA:** Oh.

9 **THE COURT:** Oh, yes. Shizuki's motion?

10 **MR. SAVERI:** That's them again. There's a motion to
11 dismiss by Shizuki, I think.

12 **THE COURT:** All right.

13 **MR. TURKEN:** Shizuki or Soshin?

14 **MR. SAVERI:** Shizuki.

15 **MR. ZAPALA:** Shizuki.

16 **THE COURT:** Okay. You-all will file by the 18th.
17 You're going to have to sit down and solve this, so have a
18 defense representative if you want, or however many defendants
19 you want, but one person who's going to bind all the defendants
20 on scheduling. All right? So you on the defense side work
21 that out.

22 It doesn't have to be you. It can be anybody you want,
23 but somebody has to bind and be a spokesperson or three
24 spokespeople for the defendants, but they're going to bind all
25 the defendants.

1 **MR. ENSON:** Not a problem.

2 **THE COURT:** And then you-all are going to sit down --
3 all the DPP's, opt-outs, class, and the IPPs are going to sit
4 down and work out a proposal. All right?

5 **MR. SAVERI:** Yes.

6 **MR. TURKEN:** Thank you, Your Honor.

7 **THE COURT:** It seems to me a little extra time is
8 probably inevitable -- okay? -- but pushing things out
9 hugely -- I've got to be honest with you, I mean, you opted out
10 and you knew what the risks were going to be. The cases, as
11 far as I can tell, are 100 percent overlapping thematically,
12 legally, and factually except for the slight wrinkle that you
13 have a named defendant, but all that is incorporated in the
14 larger group. So if we have to slice and dice, it is not going
15 to be in favor of extending things and starting all over for
16 you.

17 **MR. TURKEN:** We are not asking for that. We are just
18 asking for a little more time.

19 **THE COURT:** That's fine. A little more time is what
20 you are on a sticking point on. You're going to work that out
21 and you're going to file a proposed statement with a proposed
22 schedule next week by the 18th, and then I'll have you back on
23 the 25th at --

24 **THE CLERK:** 26th.

25 **THE COURT:** 26th.

1 **THE CLERK:** 10:00 a.m.

2 **THE COURT:** Okay. 10:00 a.m.

3 **MR. TOMPKINS:** Your Honor, one issue. This is
4 Mr. Tompkins for Flextronics.

5 **THE COURT:** Yes.

6 **MR. TOMPKINS:** I do want to clarify that the issues
7 overlap in terms of liability but because of Flextronics'
8 different FTAA position, the expert analysis is of a very, very
9 different dataset than Mr. Saveri has analyzed; and that is a
10 significantly different expert project that has to be not
11 commenced but it has to be undertaken substantially after an
12 FTAA ruling has been received. So I just want to clarify that
13 it's not like we're just sitting on the same pile of data.

14 **THE COURT:** I understand.

15 **MR. SAVERI:** And I don't think I suggested that.

16 **THE COURT:** I get it. Okay.

17 **MR. SAVERI:** Your Honor?

18 **THE COURT:** Yes.

19 **MR. SAVERI:** We have under the current schedule a
20 discovery cutoff in this case right now of November 6th.
21 That's a -- at this point it feels a little dire, and so we
22 would at least like some relief from that.

23 **THE COURT:** That's almost certainly going to be
24 extended. Okay?

25 **MR. SAVERI:** Okay.

1 **THE COURT:** So don't -- that's what you-all are going
2 to work out and that will be the final amended scheduling
3 order --

4 **MR. SAVERI:** I appreciate that. Thank you.

5 **THE COURT:** -- ideally, unless something on my end
6 requires a change. Final party-driven amended scheduling
7 order.

8 **MR. SAVERI:** I appreciate that. Thank you very much,
9 Your Honor.

10 **MR. TURKEN:** Thank you, Your Honor.

11 **MR. ZAPALA:** Thank you, Your Honor.

12 **THE COURT:** All right. Thank you.

13 **MR. ENSON:** Your Honor, one final brief issue.

14 **THE COURT:** Yes.

15 **MR. ENSON:** Has Your Honor decided on whether or not
16 you'd like to hear testimony from the experts in connection
17 with class certification?

18 **THE COURT:** I have not, and I have some internal
19 things I need to take a look at, but not yet. I will do that
20 when I can.

21 **MR. ENSON:** All right. Thank you, Your Honor.

22 **THE COURT:** All right.

23 **MR. TURKEN:** Thank you, Your Honor.

24 **MR. ZAPALA:** Thank you.

25 (Proceedings adjourned at 3:44 p.m.)

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Friday, October 13, 2017

A handwritten signature in black ink, appearing to read "Jo Ann Bryce", is written over a horizontal line.

Jo Ann Bryce, CSR No. 3321, RMR, CRR, FCRR
U.S. Court Reporter